

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

PETER LORA, et al.,)	Case No. 1:07 CV 2787
)	
Plaintiffs,)	Judge Dan Aaron Polster
)	
vs.)	<u>ORDER</u>
)	
DEAN BOLAND,)	
)	
Defendant.)	

Yesterday, Plaintiffs filed a motion for attorney's fees and costs (Doc. # 134) pursuant to the Court's Order (Doc. # 133) and to Rule 54(d) of the Federal Rules of Civil Procedure. Defendant then filed its opposition brief (Doc. # 135) arguing that the Court lacks jurisdiction to award attorney's fees and costs because a notice of appeal has been filed.

In the first place, the Court *does* have jurisdiction to award attorney's fees after a notice of appeal has been filed. Jankovich v. Bowen, 868 F.2d 867, 871 (6th Cir. 1989). Secondly, the Sixth Circuit will almost certainly dismiss Plaintiffs' cross-appeal and direct the district court to rule on the issue. That is because the only issue raised in the cross-appeal—whether the Court erred by denying attorney's fees and costs to Plaintiffs—was never actually ruled on by this Court. (See. Doc. # 120). Since the Court never ruled on the issue of fees and costs, it could not have denied them. (As noted in Monday's Order (Doc. # 133) the Court did not rule on the issue because it had assumed that Plaintiffs would file a Rule 54(d) motion after the Court entered judgment on October 20, 2011. (Doc. # 133).) There is therefore no appealable order with respect to attorney's fees and costs.

Accordingly, because it has jurisdiction, the Court will rule on Plaintiffs' motion for

attorney's fees and costs. If Defendant wishes to object to Plaintiffs' motion on the merits, then the Court orders Defendant to file his opposition brief no later than January 10, 2012. Plaintiffs' reply will be due no later than January 17.

IT IS SO ORDERED.

/s/ *Dan A. Polster* *December 7, 2011*

Dan Aaron Polster

United States District Judge